IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 933 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK METAL CORPORATION

Versus

COMMISSIONER OF CUSTOMS (PREVENTION)

Appearance:

1. Special Civil Application No. 933 of 2004

MR FB BRAHMBHATT for Petitioner No. 1

MR JITENDRA MALKAN for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 01/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Jitendra Malkan, learned senior standing counsel for the Central Government waives

service of Rule for the respondents.

2. This petition challenges the order dated 6.11.2003 (Annexure "F") of the Commissioner of Customs (Appeals), Ahmedabad dismissing the petitioner's appeal as time barred.

3. The petitioner had imported 20 mobile phones through Indian Airlines. The goods landed at the Ahmedabad Airport on 27.6.1998. In the Airways bill, the petitioner had declared the goods as household goods. The Customs department initiated proceedings for confiscation and penalty under Section 111 (d) & (f) and Section 112(a) of the Customs Act, 1962 ("the Act" for short). The adjudicating authority passed the order-in-orginal dated 28.12.1998 holding that the imported goods were deliberately misdeclared in the Airways bill as household goods with a mala fide intention to clear the same without payment of duty and the petitioner would have succeeded in the attempt had the consignment not been detected by the Customs officers. The adjudicating authority, therefore, held that the goods valued at Rs.2,12,000/- were liable for confiscation under Section 111(d) & (f) of the Act and that the petitioner was liable for penalty of Rs.50,000/= under Section 112(a) of the Act. The petitioner was also given an option to redeem the goods on payment of redemption fine of Rs.1,00,000/- under Section 125 of the Act.

4. The petitioner challenged the aforesaid order-in-original by filing Special Civil Application No.2599 of 1999. This Court relegated the petitioner to the alternative remedy of appeal before the Commissioner (Appeals). When the petitioner pointed out that the appeal would be time barred, this Court directed that in case the petitioner filed an appeal within six weeks from the date of receipt of the copy of the order, the appellate forum shall hear the appeal on merits. That order was passed on 24.10.2001. The petitioner received the copy of the order on 24.3.2002. According to the petitioner, the appeal was filed on 3.5.2002. According to the impugned order in appeal, the appeal came to be received by the Office of the Commissioner (Appeals) on 6.5.2002. The appellate authority, therefore, held that the appeal was not filed within the period of six weeks' time granted by this Court and that otherwise also the appeal was time barred and beyond the period for which the Commissioner (Appeals) had the power to condone the delay. Accordingly, the appeal came to be dismissed as time barred.

5. The learned counsel for the petitioner submits that when the petitioner received the certified copy of the order on 24.3.2002, the city of Ahmedabad was witnessing communal riots. The petitioner is residing in Mumbai and the petitioner had legitimate apprehension about the security of his life and, therefore, the petitioner could not file the appeal immediately after receiving the copy of the order. It is submitted that the last date for filing the appeal within the period of six weeks granted by this Court was 3.5.2002 and, therefore, the Commissioner ought not to have dismissed the appeal merely because there was alleged delay of three days.

It is further submitted that the petitioner is keen to ventilate his grievances before the departmental appellate authority because the petitioner i.e. the proprietor of the petitioner-firm is subjected to a lot of harassment by issuance of summons between 1st and 19th September 1998 under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985, the copies whereof are produced at Annexure "G" colly. stating that the petitioner's attendance was necessary in connection with the alleged dealing of heroin weighing 6.480 Kgs. valued at Rs.6.48 Crores seized on 6.7.1998 from the godown of M/s Diamond Transport Corporation, Ahmedabad.

The learned counsel for the petitioner states that the petitioner has nothing to do with the said M/s Diamond Transport Corporation, Ahmedabad and that except issuance of the aforesaid summons, there is no other criminal case filed against the petitioner in connection with the aforesaid alleged offence and that the summons were issued only in order to harass the petitioner because the petitioner was contesting the Customs Department's case that the petitioner had made a misdeclaration about import of 20 mobile phone. The learned counsel further points out from para 4(i) of the petition that the allegations about the mala fides of the petitioner are absolutely baseless because there cannot be any misdeclaration which could attract higher rate of duty.

6. On the other hand, Mr Jitendra Malkan, learned senior standing counsel for the respondents submits that since there was delay on the part of the petitioner in obtaining the copy of the order and also in filing the appeal after receiving the copy of the order, the Commissioner (Appeals) was justified in dismissing the appeal as time barred. Mr Malkan further points out that

the copy of the order dated 24.10.2001 was received by the Commissioner of Customs (Prev.) on 2.1.2002. Therefore, the petitioner also would have received the copy of the order around the same time.

7. Having heard the learned counsel for the parties, it appears to us that as far as receipt of the order of this Court is concerned, the appellate authority has proceeded on the assumption that just as the respondent authorities were served with the certified copy of the order, the petitioner would also have been served with such order around the same time. However, the assumption is misconceived. What the respondents were served was the writ of this Court containing the directions of the Court. Since such writs are addressed to the concerned authorities who are required to comply with the directions of the Court, the writs are not issued to the petitioner, but it is at the instance of the petitioner that the writs are issued to the respondent authorities. The Commissioner (Appeals), therefore, was not justified in presuming that the petitioner would also have been served with a copy of the Court's order around the time when the respondents were served.

Apart from that aspect, the Commissioner (Appeals) ought to have taken judicial notice of the fact that the city of Ahmedabad was disturbed by riots in the month of March and April, 2002 and, therefore, a reasonable view was required to be taken, more particularly when the petitioner had despatched the appeal memo on 3/4th May 2002 and the same was received by the appellate authority on 6.5.2002 within about six weeks from the date of receipt of the certified copy of the order of this Court.

8. In view of the above discussion, we partly allow this petition and set aside the order dated 6.11.2003 (Annexure "F") of the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner of Customs (Appeals), Ahmedabad shall hear and decide the petitioner's appeal No. S/49-72/CUS/2002 on merits.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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